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SUBJECT: ADOPTION FRAUD SUMMARY - VIETNAM

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11. Summary : Adoption related fraud in Vietnam is a large and growing problem. The combination of a decentralized administrative system, a legal framework that lacks procedures for oversight and accountability, and an unregulated donation system have combined to produce an adoption system rife with fraud and child selling. In interviews with consular officers, 75% of parents have stated that they received payment from the orphanage in exchange for placing their child in the orphanage. On average this payment was six million Vietnamese Dong, which is the equivalent of 11 months salary at minimum wage in Vietnam. Throughout Vietnam, officials at orphanages connected with international adoptions report that the number of deserted children has increased by up to 1700% since 2005, the year that the adoption agreement with the United States was signed. Vietnamese officials have told the Embassy that "these desertions would not occur if the United States stopped issuing visas for the adoption of Vietnamese children." Embassy investigations have uncovered multiple cases of children being offered for international adoption without their birth parents consent, after the birth parents failed to pay hospital bills for the children. Despite the documented abuses, the Department of International Adoption has acknowledged that it has not taken any action, criminal or administrative, against any individual or organization for any violation of Vietnamese law or regulation concerning adoption. End Summary

Country Fraud Profile

12. Vietnam is considered to be a high risk country for immigration fraud according to the Department of State. Fraudulent documents are routinely submitted by Vietnamese applicants in both non-immigrant and immigrant visa applications. These include both documents that have been fabricated outright and official documents issued improperly or based on incorrect information. Birth certificates, household registry documents, and marriage certificates can easily be purchased from corrupt local government

officials or brokers. Marriage fraud, in order to obtain immigration benefits, is common and has resulted in multiple arrests in the United States. Vietnam ranks 123 out of 180 countries on Transparency International's 2007 Corruption Index , with 1 being the least corrupt.

Adoption Legislation and Administrative Structure

¶3. International adoption in Vietnam is regulated by two decrees: Decree 68/2002 and Decree 69/2006. These decrees divide responsibility for adoption between the Department of International Adoption (DIA) in the Ministry of Justice, and the Ministry of Labor, Invalids and Social Affairs (MOLISA) at the national level. Most of the actual administration of adoptions, however, is handled at the provincial or district level, with minimal oversight from DIA or MOLISA. For example, the matching of children and adoptive parents is the responsibility of the district-level Department of Labor, Invalids and Social Affairs. In reality, it is often delegated to the orphanage director. If DIA feels that a child is not eligible for international adoption, they can request the office that made the match review the file, but they cannot block the match or prevent the completion of a full and final adoption.

¶4. The definition of an adoptable orphan is provided in Decree 68/2002 Article 44, which states that a child cannot be released for adoption without "the written voluntary agreement of the father and/or mother of that child." The decree lists only three exceptions to this rule. The first is if both parents are deceased; the second is if the child "has been abandoned or left at a medical establishment;" and the third is if "the child's parents have lost their civil act capacity" [sic]. Decree 69/2006 clarifies that the orphanage or People's Committee must prove that a child is covered by one of these exceptions. Otherwise, the child is still

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considered to be under its parents' custody, and their consent is required prior to any adoption being authorized. Decree 68/2002 and Decree 69/2006 also establish that in the case of a child who has been abandoned or left at a medical facility, a 30 day search must be made for the birth parents, and in all cases a separate 30 day search must be made for domestic adoptive parents. These searches are conducted by the orphanage or local People's Committee.

Links between ASPs and Orphanages

¶5. Vietnamese law requires that an Adoption Service Provider (ASP) sign a donation agreement with an orphanage before the ASP can arrange adoptions from the orphanage. These agreements are generally kept secret by the ASP. However, several orphanage directors have told the Embassy that they will actively bargain with multiple ASPs, and will only work with the ASP that offers them the highest donation per child referred. While, in theory, these donations are a mechanism to assist in the care of the children at the orphanage, in practice they can have a distorting effect on the adoption system.

¶6. Orphanage directors in four provinces have reported to the Embassy that there is a strong financial incentive for them to maximize the number of children available for foreign adoption in their centers. The donation provided per child (available for international adoption) can be up to 10 times the standard government funding. Hospital and social workers have reported that orphanage directors offer them financial incentives for each child sent to their orphanage. There is also a disincentive to provide care to children who are not available for international adoption. In many developing countries, including Vietnam, a large number of children living in orphanages are children "in care," or children whose families have temporarily placed them in an orphanage due to difficult times but hope to regain custody of their children in the future. Nevertheless, orphanages (some privately run) have been established exclusively to serve the needs of children destined for international adoption.

¶7. As a result of the autonomy given to orphanage directors by MOLISA, individual orphanage directors, in conjunction with representatives of their sponsoring ASP, have broad latitude in determining how donations will be made, what the amount will be, and whether applications from prospective domestic adoptive parents will be processed. For example, one orphanage in Hanoi, which is entirely funded by an American ASP, submits expense reports and receipts to the ASP on a monthly basis. The ASP then transfers funds to reimburse the orphanage for its expenses. The number of infants in this orphanage has remained steady for the past three years. The orphanage is clean, well stocked with medicine and has an RN on duty. This orphanage prioritizes reuniting children with their biological parents, and processes equal numbers of domestic and international adoptions. By contrast, another Hanoi orphanage receives most of its funding on a per internationally adoptable child basis and the payment is made in cash directly to the orphanage director. This orphanage has seen the number of infants in its care increase by over 2000% in the past year, but it has not made significant increases in staff and does not have an RN. MOLISA recently investigated this orphanage when unsanitary conditions led to the deaths of several infants in its care. This orphanage has never processed a domestic adoption.

¶8. According to the DIA, the donation system is further complicated when ASPs make a donation in kind or finance a project for the orphanage rather than paying a cash donation. According to DIA, this is because the orphanage is required to refer one child for foreign adoption for every x dollars donated by the ASP. Thus, if the ASP funds a \$10,000 project and the per child donation is set at \$1000 per child, then the orphanage would be required to refer 10 children for international adoption to the ASP. Should the orphanage not have 10 children who are qualified for international adoption, then, according to DIA, the orphanage director is required to find the additional children to complete his side of the agreement. Two orphanage directors have confirmed to consular officers that they are feeling pressure to find more children for their orphanage to "compensate" ASPs for their donations. These arrangements result in orphanages that are focused on finding children for foreign families, rather than providing the best possible care to children in need.

¶9. Another distorting effect of the donation system is that it

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undermines protections in Vietnamese law which requires a 30 day search for birth parents and/or domestic adoptive parents as described above. Since, in most cases, the ASP has a close relationship with the orphanage, the ASP rep is informed as soon as a potentially adoptable child enters the orphanage. This frequently results in the issuance of a "soft referral," where adopting parents are notified that they have been matched with a child before the completion of the two consecutive 30 day search periods listed above. The DIA has stated that such pre-referrals are illegal. Nonetheless, in over 40 documented cases, DIA has taken no action to punish or prevent the issuance of soft referrals, noting that all they can do is to inform provincial or district officials of the law and request their compliance.

¶10. The problem of soft referrals is compounded by the donation system. Local officials throughout Vietnam have reported that they have never received any calls in response to ads run seeking the birth parents of a deserted child. In fact, officials at the Ministry of Justice acknowledge that such advertisements are ineffective as many families in these provinces have no access to TV or radio and are often illiterate. Vietnamese social workers also note that if a child is abandoned, the birth family is most likely to reclaim the child 3-6 months after the abandonment. However, the ads are run only one week after the abandonment, further decreasing their effectiveness. Further, provincial officials have stated that the advertisements are made in a manner that significantly decreases the likelihood that they will be heard or seen by the birth families. Investigations by the Embassy have also confirmed that the ads are not effective. In 6 cases where investigations by the Embassy have located the birth family of allegedly deserted children, the birth families said that they never heard or saw any

ads seeking the parents of the child.

¶11. The search for domestic adoptive parents, is, by design, ineffective. Orphanage directors in two provinces have confirmed to the Embassy that while they receive applications from families interested in domestic adoption, they do not process these applications. The reason that applications by Vietnamese families to adopt Vietnamese children are not processed is because the orphanages will receive a donation from an ASP if the baby is adopted internationally, while they will not receive these funds if the child is adopted domestically. Another orphanage director stated that he would need "permission" from the ASP funding his orphanage in order to release a child for domestic adoption, noting that the monthly support payments the ASP made for the children gave the ASP the "authority" to decide the child's future.

Types of Adoption Cases

¶12. Under US Immigration law, Vietnamese children can be adopted if they are orphans due to the whereabouts of their birth parents being unknown (desertion) or if one or both birth parents have permanently relinquished custody of their child to the orphanage, (termed "abandonment" by US Immigration law, but commonly referred to as relinquishment). Prior to the suspension of adoption in 2002, 80% of cases were relinquishments, and 20% were abandonments. Since the Memorandum of Agreement (MOA) went into effect in 2005, those figures have flipped with over 85% of the cases involving desertions. Orphanages not involved in international adoption, however, have reported to the Embassy that they have not seen any increase in the number of deserted children, and the vast majority of children in these facilities are children in care. For example, in the Hanoi orphanage previously mentioned, only 4 of 29 children (2 with special needs) were available for international adoption - the agreement that this orphanage has with the American ASP is not based on cash in kind for referrals. Post has received multiple, credible reports from orphanage officials and Americans connected with ASPs that facilitators are deliberately staging fraudulent desertions to conceal the identity of the birth parents. According to these individuals, this phenomenon is a byproduct of the 2002 shutdown, which occurred as a result of United States Citizenship and Immigration Services (USCIS) interviews in which many birth parents told the agency that they had sold their children or that their children had been released for adoption without their knowledge or consent.

Relinquishments

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¶13. Cases where one or both birth parents have permanently relinquished their child to an orphanage account for 15% of cases filed under the Orphan First program. In interviews with consular officers, 75% of parents have stated that they received payment from the orphanage in exchange for placing their child in the orphanage. On average this payment was six million Vietnamese Dong, which is the equivalent of 11 months salary at minimum wage in Vietnam. Many of these families cited these payments as the primary reason for placing their child in an orphanage. The majority of these parents also state that they had not considered placing their child in an orphanage until a health care worker or orphanage official suggested to them that they should do so and informed them that they would receive a payment for doing so. Many of these parents also report that orphanage officials told them that the child will visit home frequently, will return home after they reach a certain age (often 11 or 12), or will send remittance payments from the United States. In these cases, the majority of birth parents have said they do not consent to the adoption if any of these conditions are not kept.

¶14. The Ministry of Labor Invalids and Social Affairs has stated that the payments described above are unauthorized and not funded by government sources. The Ministry of Justice has likewise confirmed that such payments are illegal under Vietnamese law. MOLISA has

stated, however, that there are absolutely no regulations on how orphanage directors can spend the money given to them by ASPs and that orphanage directors can give this money to anyone they wish, as long as the recipient did not have to take any action, such as relinquishing a child, in order to receive the "gift." Accordingly, while MOLISA can confirm that the reported payments from orphanage officials to biological parents must have come from ASP funds, they do not have the ability to take action or to investigate reports of child buying.

Desertions

¶15. Throughout Vietnam, officials at orphanages connected with international adoptions report that the number of deserted children has increased by up to 1700% since 2005, the year that the adoption agreement with the United States was signed. Officials at orphanages not connected with international adoption, however, have not seen an increase in desertions. A statistical review of child desertions reveals a series of facilities that have an unexplained high rate of child desertions. For example, one small medical clinic in Hanoi, which reported an average of 50 live births per year, had a desertion rate of 8%, while a nearby hospital, with an average of 3,600 live births per year, had a desertion rate of 0.005%. Since there is no difference in the cost of delivery or maternity care at the two facilities, this discrepancy can not be explained by cost or other economic data.

¶16. When Embassy officials spoke with officials at these two institutions, other significant discrepancies appeared. In the hospital, the desertion of a child was recorded, as required by Vietnamese law, in the mother's medical record. Hospital staff was familiar with the number of desertions and the children were referred for domestic adoption. By contrast, at the clinic, the desertions were not recorded in the main medical log. Instead they were only recorded in a private log kept in a locked safe to which only the director had access. The nurses at the facility all gave sworn statements that no child had ever been deserted at the clinic, yet the director had signed paperwork purportedly documenting multiple desertions. These children were all offered for international adoption.

¶17. Provincial records also document this unusual pattern of "desertion pockets." For example, in Tuyen Quang province in 2007 there were 77 cases of child desertion. Of these, 76 occurred at one particular orphanage. The director of this orphanage told the Embassy that before he signed an agreement with an American ASP in April 2006, the orphanage was home to 10 children, most of whom had been relinquished. By January 2007, the orphanage was home to 23 children, of whom fifty percent had been deserted. By January 2008, the orphanage was home to 70 infants, with over 90% of them having been deserted. The orphanage director attributed the growth in the number of children and the number of desertions to the fact that the orphanage was receiving funding from the American ASP. The orphanage guards also confirmed that desertions were extremely rare before 2006, but now they find five infants per month on average.

¶18. In one province in northern Vietnam province, the director of the largest hospital in the province acknowledged that since 2005

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his hospital had an unusually high rate of desertions. He told the Embassy that "these desertions would not occur if the US stopped issuing visas for the adoption of Vietnamese children." In another province, an ASP official complained to USCIS that because the average processing time for I-600 petitions has increased from 10 days to 45, the number of referrals his agency could receive had decreased. He said that there were children ready to be adopted, but the orphanage could not accept them until the current cases were processed. Given that the majority of children in this province have purportedly been deserted, the comment raises serious questions about actual origin of these children, since the orphanage should not be able to schedule desertions.

¶19. In other cases, individuals report finding children in a field or by the side of the road. Often the individual who purportedly

found the child (child finder) is a police officer, a village official or a member of their immediate family. This results in a very close relationship between the child finder and the officials certifying their reports. Embassy investigations have shown that many of these reports are fraudulent. These include cases in which those individuals, who only months or weeks before had signed statements claiming to have found a deserted child, told consular officers that they had never in their lives found a deserted child. In one case, the child finder could not remember finding a child, even though the purported event had happened the day before. In another case, the child finder stated that the police told her if she did not sign a fraudulent statement claiming that she had found a child in 2007, they would arrest her for kidnapping in connection with a child finder statement that she signed in 2006.

¶20. In over 10 cases, Embassy investigations have discovered the identity of the birth mother in cases where a child was purportedly deserted. In all of these cases, the birth mother was known to orphanage or hospital officials, but these institutions decided to fraudulently document the case as a desertion. In some cases, this was to conceal payments to the birth family. In others, children were declared to be deserted with unknown parents after the birth parents failed to pay outstanding hospital bills.

¶21. The following cases highlight the effects of fraudulent documentation and corruption in desertion cases. According to official Vietnamese documentation the child was born at Hospital X and then the birth mother left the hospital and was untraceable. An Embassy investigation showed that the child was born by C-section at a different hospital. The child was pre-mature and had significant respiratory problems and thus was transferred to Hospital X. Based on information from the hospital director, the Embassy located and interviewed the birth mother, who stated that she had visited her son at the hospital several times, but that the hospital director would not let her hold the child until she paid a 12 million Vietnam Dong hospital bill. She stated that she applied to have the bill reduced due to her low income, but the director refused to consider the application. Additionally, she stated that she had been told that her child would require lifelong treatment for water on the brain and that, as a result, her son had been transferred to Orphanage Y for care. She was shocked to hear that the medical report from the U.S. panel physician stated that the child was healthy. After considerable pressure from the U.S. Mission, this adoption was canceled and the child is now back with its birth parents.

Safehouses

¶22. In five provinces, the Embassy has discovered "safehouses" for pregnant women. These are unlicensed, unregulated facilities that provide free room and board to pregnant women in return for their commitment to relinquish their children upon birth. None of these facilities openly advertises its services, and women learn of the homes existence solely by word of mouth. While the facilities are open and the women are free to come and go as they please, they incur a debt for each night that they stay at the safehouse that they have to pay if they do not relinquish their child. Recent Vietnamese media reports of such facilities have revealed that women often live in squalor and in many cases are forced to labor during their stay. Investigations by consular officers have revealed allegations of possible abuse by safehouse staff against the female residents. In several of the safehouses, there is a policy that the birth mother cannot see her child after delivery, in order to prevent bonding. Women in these facilities report receiving up to 6 million Vietnam Dong as payment for their children. While the

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source of funding for these safehouses is unclear, they appear to have close connections with nearby orphanages whose operating costs are exclusively funded by donations from ASPs.

¶23. When the Embassy visited these safehouses, we saw up to 20 women living in a single home. These women reported that orphanage officials came to the house in order to have them sign paperwork

relinquishing their children. The women would then receive the promised payments. Often, the child is then taken to a nearby hospital or orphanage where a second set of paperwork is produced stating that the child was deserted. This is the paperwork that is submitted to the DIA and to the Embassy to support the claim that the child is an orphan.

Vietnamese Documents - Issuance Procedures

¶24. Documents relating to adoptions in Vietnam are generally issued by orphanage directors, local People's Committees, Provincial Departments and the Department for International Adoptions (DIA). These officials do not independently verify the facts asserted in these documents. Further, verifications conducted by U.S. officials in a significant number of cases have uncovered evidence that while these documents have been validly issued, they are based on fraudulent information. As a result, these documents are of questionable veracity and thus cannot be considered reliable for immigration purposes. These documents cannot and should not be regarded as conclusive proof of the facts they purport to certify because of the potential for fraud or error in their issuance. Fraud or mistake may reasonably be suspected in any case where the facts cited in the document are contradicted by other evidence.

¶25. In cases involving the desertion of a child, local officials usually issue birth certificates and reports of abandonment at the request of orphanage or hospital officials without speaking to the individuals involved. For example, the People's Committee in one southern province told the Embassy that they issue whatever documents a local midwife requests without verifying the accuracy of the statements. This is done to "help her with her business with the orphanage." In a different province, village officials issued an official statement that a birth mother was single, even though their own registry book showed she was married and had four children. Further, MOLISA has confirmed that for deserted children a birth certificate can be issued showing the date and time of desertion as the date and time of birth and listing the birth parents as unknown, even if the true facts have been previously recorded in official documents.

¶26. The Embassy has received credible reports that some ASPs pay \$10,000 per referred child to local facilitators. According to one of these facilitators, a significant portion of this money goes to the orphanage director, who is responsible for finding children. The facilitator and orphanage director then work together to create a false advertisement claiming that the child was abandoned, regardless of the child's true origins. This ad is then used to obtain the necessary paperwork from local officials and DIA. The facilitator noted that as long as the right fee is paid, no one tries to verify the facts of the case, and the documents are issued with no questions asked.

¶27. Fraudulent police reports have also been submitted to the Embassy in connection with adoption cases. For example, in one adoption case the original file stated that the birth mother was unknown. However, hospital records revealed the mother's name and address. When the Embassy requested an explanation as to why DIA approved the adoption case without a police search for the biological mother as required by Vietnamese law, DIA blamed the omission of the birthmother search report on the village police and provided a document dated March 21, 2007, stating that a police check had been done and they could not find the birth mother. However, the police officer who purportedly did the check stated he had not actually done a physical search, and that the date on the document was inaccurate. He stated that "about 20 days ago" the police chief in another village visited his office with a prepared backdated report about the search and asked him to sign, which he did.

Vietnamese Documents - Verification Procedures

¶28. Once a child has been matched with a prospective adoptive parent, the provincial level Department of Justice conducts a review of the file to ensure that it contains the proper documents required by Vietnamese law. According to provincial Department of Justice officials, in all cases the review consists of physically verifying that the child is in the orphanage and verifying that each required document is signed, sealed and in the file. There is no requirement to verify the accuracy of the information contained in the file. Further, there is no requirement to verify that a birth parent intended to relinquish their child or to verify the circumstances of a child's desertion. According to DIA, even if this review were to uncover any discrepancies, DIA and provincial Department of Justice officials are prohibited from conducting an independent review of the facts or speaking directly with the witnesses in the case. Instead, they are required by Article 45 of Decree 68/2002 to return the case to the official who prepared the original report. If this individual recertifies that his original report is correct, then the case is allowed to proceed.

¶29. As a result of this limited authority, DIA has informed the Embassy that it does not conduct field verification of adoptions in Vietnam. Indeed, DIA's explicit position is that, as long as the appropriate papers have been signed by the correct officials, DIA will certify that the adoption complies with Vietnamese law. Further, it should be noted that DIA has stated that it does not actually have the authority to declare an adoption illegal, revoke a Giving and Receiving Ceremony, or cancel a referral. The lack of verification and accountability regulations in Vietnamese adoption law creates a situation where an unscrupulous orphanage director or local official who fabricates a "desertion" or "relinquishment." is also the only official who can investigate the alleged fraud in the case.

¶30. A provincial Department of Justice official told the Embassy of cases where under Vietnamese law children had been matched with American adopting families and the cases were referred to her office for verification. In one case, hospital records stated that the birth mother had registered at the hospital under an assumed name and then died shortly after the birth. The child was listed as deserted. However, the DOJ official found a reference in the hospital file that the woman's family had come to the hospital to claim her body. As a result the official contacted the family, who stated that the hospital had transferred the child to the orphanage without their consent and that the orphanage had denied them visitation rights. The family has now been reunited with the child, who is being raised by its maternal grandparents. However, she noted that under Vietnamese law no one had technically done anything wrong in separating this child from his family, and that the adoption would normally have been allowed to be completed had it not been for this particular official's independent decision to go a step further than required by Vietnamese law. Only her personal interest in the case and her ability to persuade other local officials to do the right thing prevented this child from being permanently separated from its family.

Reports of Corruption in Adoption System

¶31. The Embassy has received credible reports from current and former employees of ASPs working in Vietnam regarding corruption in the adoption system. These begin with the licensing procedures. Several ASPs have reported that they were told they had to fund tours to the United States for DIA and other government officials in order to receive their licenses. One described taking a Vietnamese delegation to a large U.S. shopping mall and then using his credit card to pay for all of their purchases. Others have reported being asked for cash payments in order to obtain provincial licenses.

¶32. In addition, statements from adopting parents and ASP employees show that many ASPs ask adopting parents to pay cash donations to orphanage directors and staff. These payments are illegal according to the Vietnamese Ministry of Justice, but the Ministry acknowledges that they are widespread and that they are a key factor in the irregularities seen in the adoption system in Vietnam. Further, ASPs have reported that cash and in-kind donations have been diverted by orphanage officials and used to finance personal

property, private cars, jewelry and, in one case, a commercial real estate development.

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Official Response to Reports of Irregularities

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¶33. The DIA has acknowledged that it has not taken any action, criminal or administrative, against any individual or organization for any violation of Vietnamese law or regulation concerning adoption, despite its being made aware of the information developed regarding fraud. They have also stated that they have taken no action to address concerns or allegations of wrongdoing submitted to them by individuals, ASPs or the U.S. Embassy. To the contrary, DIA has stated that it is in the "humanitarian" interest of the Government of Vietnam to ensure that every proposed adoption is completed as quickly as possible. They note that the ASPs have made a donation for the child, and thus, even if they had the authority to revoke a referral or an adoption, they would not do so because they could not break their contract with the ASP.

¶34. In fact, DIA has acknowledged that when it receives reports from the Embassy regarding fraud in adoption cases, they meet with the ASP or local facilitators to develop a strategy to refute the Embassy's evidence. Frequently this consists of a second investigation where child-finders are notified in advance that they will be re-interviewed in front of the People's Committee and reminded that they had previously signed statements saying they could be punished if the original statements they gave to the People's Committee were untrue. Under this pressure, child-finders have recanted the statements they had made to consular officials.

¶35. In other cases, birth mothers from rural provinces who had told the Embassy they did not agree to relinquish their children were summoned to Hanoi at their own expense and ordered to appear before DIA to sign new relinquishment papers. In another case, after an Embassy investigation determined that hospital officials had fraudulently declared a child deserted and concealed the identity of the birth mother, the ASP contacted the birth mother and obtained a certificate of relinquishment signed by her. Upon further questioning of both the birth mother and the ASP official, the Embassy learned that the ASP took the birth mother to the police station and told her that if she signed the paperwork she would receive 200,000 dong and would be allowed to see her son. The birth mother, who is illiterate, signed the paperwork even though she did not know what it said because she wanted to see her son.

¶36. When ASP employees have given statements to the Embassy detailing corruption in Vietnamese adoptions, they have been pressured by DIA and local officials in an effort to recant these statements. In one case an American citizen left Vietnam after local officials made it clear she would be arrested for reporting an orphanage director's misuse of ASP donations.

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